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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,155	11/09/2001	Peter Frisk	027650-937	7579

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EXAMINER
PATTERSON, MARC A

ART UNIT	PAPER NUMBER
1772	

DATE MAILED: 07/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Advisory Action	09/890,155	FRISK ET AL.
	Examiner	**Art Unit**	
	Marc A Patterson	1772	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 June 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may <u>only</u> be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

<u>PERIOD FOR REPLY</u> [check either a) or b)]

a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☒ The proposed amendment(s) will not be entered because:

    (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);

    (b) ☐ they raise the issue of new matter (see Note below);

    (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

        NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☐ The a)☐ affidavit, b)☐ exhibit, or c)☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☒ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: <u>none</u>.

    Claim(s) objected to: <u>none</u>.

    Claim(s) rejected: <u>1-6</u>.

    Claim(s) withdrawn from consideration: <u>none</u>.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☒ Other: <u>See attached.</u>

ADVISORY ACTION

Acknowledgement of Applicant's Amendments

1.   The amendment made in Claim 1 in the After Final Amendment filed June 16, 2004 has

not been entered because the amendment raises a new issue. The claims prior to amendment did

not contain newly submitted Claims 7 – 9 and therefore were not directed to a packaging

container 'wherein the thermoplastic innermost layer is extrusion laminated.' The amendment

would therefore require further search and consideration to be completely addressed. Even if the

amendment was entered, the amended claim would not overcome the rejection because Eckstein

discloses a packaging that is extrusion laminated (column 6, lines 50 – 51).

Applicant's arguments regarding the 35 U.S.C. 103(a) rejection of Claims 1 – 4 and 6 as

being unpatentable over Eckstein (U.S. Patent No. 4,418,841) in view of Gillespie et al (U.S.

Patent No. 5,536,542) and 35 U.S.C. 103(a) rejection of Claim 5 as being unpatentable over

Eckstein (U.S. Patent No. 4,418,841) in view of Gillespie et al (U.S. Patent No. 5,536,542) and

further in view of Ikenoya et al (U.S. Patent No. 5,732,825), of record in the previous Action,

have been carefully considered but have not been found to be persuasive for the reasons set forth

below.

Applicant argues, on page 8 of Paper No. 11, that the rejection is improper because

Gillespie et al do not disclose a linear low density polyethylene, and that although Eckstein does

disclose a linear low density polyethylene, the teaching of a linear low density polyethylene must

also be in Gillespie et al.

However, as stated on page 3 of the previous Action, Gilliespie et al teach the use of a

polyethylene having a density of less than 0.92 grams per milliliter (column 1, lines 53 – 63), a

peak melting point of 106.9 degrees Celsius (column 7, lines 46 – 60; Table 1), a melt flow index

of 4 decigrams per minute (column 2, lines 60 – 64) and a swelling ratio of 1.4 – 1.6 (column 2,

lines 5 – 16) for the purpose of obtaining a heat seal layer which is resistant to degradation

(column 1, lines 53 – 63). The desirability of providing for a polyethylene having a density of

less than 0.92 grams per milliliter, a peak melting point of 106.9 degrees Celsius, a melt flow

index of 4 decigrams per minute and a swelling ratio of 1.4 – 1.6 in Eckstein, which is a heat seal

layer, would therefore be obvious to one of ordinary skill in the art. It therefore would have been

obvious for one of ordinary skill in the art at the time Applicant's invention was made to have

provided for a polyethylene having a density of less than 0.92 grams per milliliter, a peak

melting point of 106.9 degrees Celsius, a melt flow index of 4 decigrams per minute and a

swelling ratio of 1.4 – 1.6 in Eckstein in order to obtain a heat seal layer which is resistant to

degradation as taught by Gilliespie et al.

Applicant also argues, on page 8, that because Gillespie et al teaches low density

polyethylene, one of ordinary skill in the art would utilize low density polyethylene in utilizing

the teaching.

However, because linear low density polyethylene is clearly one of the low density

polyethylenes, one of ordinary skill in the art would be motivated to utilize the teaching of

Gillespie et al in Eckstein.

Applicant also argues, on page 10, that Gillespie et al teaches against the use of a melt

index, annealed density and swell ratio other than the disclosed melt index, annealed density and

swell ratio.

However, as stated on page 2 of the previous Action, Gillespie actually teaches against the use of a melt index (column 2, line 64), annealed density (column 3, lines 15 – 17) and swell ratio (column 3, lines 4 – 7) which are much below or much above the disclose melt index, annealed density and swell ratio (column 3, lines 4 – 7), and the claimed values are clearly not much above or below the values that are taught.

Applicant also argues on page 10 that Gillespie et al does not teach an annealed density below 0.92 g/cc; Gillespie discusses the fact that polyethylenes having annealed density below 0.92 g/cc are known for use as a seal layer in an extrusion coated laminate, Applicant argues, but teaches that the preferred annealed density that is taught is 0.92 – 0.93 g/cc.

However, annealed density below 0.92 g/cc is also taught, although a density of 0.92 – 0.93 g/cc is stated to be preferred, because of the teaching that polyethylenes having annealed density below 0.92 g/cc are known for use as a seal layer in an extrusion coated laminate.

Applicant also argues, on page 11, that Ikenoya et al does not teach the annealed density, peak melting point, melt flow index or swelling ratio that are claimed, and does not comprise linear low density polyethylene, and that the rejection does not address the absence of these teachings; if one of ordinary skill in the art combined Eckstein and Ikenoya et al, Applicant argues, the result would not be that which is defined in Claim 5.

However, as stated on page 3 of the previous Action, Ikenoya et al teach the use of a strip tape to cover a section of the innermost layer of a container (column 5, lines 35 – 40; Figure 2) for the purpose of making a container which prevents leakage of liquid food (column 5, lines 45 – 50). Therefore, one of ordinary skill in the art would have recognized the advantage of providing for the strip tape of Ikenoya et al to cover a section of the innermost layer of Eckstein

and Gillespie et al, which is a container, depending on the desired leakage prevention of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a strip tape covering a section of the innermost layer in Eckstein and Gillespie et al in order to make a container which prevents leakage of liquid food as taught by Ikenoya et al.

Conclusion

2.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (571) 272 – 1497. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (571) 272 – 1498. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.
Art Unit 1772

HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

7/1/04